

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

YCB INTERNATIONAL, INC.,
Plaintiff,

vs.

UCF TRADING COMPANY LIMITED,
Defendant.

No. 09 C 7221

Chicago, Illinois
February 18, 2014
2:00 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS -
Evidentiary Hearing
BEFORE THE HONORABLE JAMES F. HOLDERMAN

APPEARANCES:

For the Plaintiff:

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1 (Proceedings heard in open court:)

2 THE CLERK: 09 C 7221, YCB International versus UCF
3 Trading.

4 MR. BUECHE: Good morning, Your Honor.

5 Gregory J. Bueche for YCB International.

6 THE COURT: Good afternoon.

7 MR. TREJO: Good morning, Your Honor.

8 Oscar Trejo on behalf of UCF Trading and UCF Company.

9 THE COURT: Good afternoon.

10 MR. COSENTINO: Good afternoon, Judge.

11 Chris Cosentino on behalf of UCF, accompanying Oscar
12 Trejo.

13 THE COURT: All right. Good afternoon.

14 Are we ready to proceed?

15 MR. BUECHE: Yes, Your Honor.

16 And just on the procedure, I do have some questions I
17 would like to ask Mr. Gagnon. I don't know if you'll be
18 allowing that, but --

19 THE COURT: Is Mr. Gagnon here?

20 MR. BUECHE: He is.

21 MR. COSENTINO: He's present in open court, Your
22 Honor.

23 THE COURT: All right.

24 MR. BUECHE: I'm going to --

25 THE COURT: You certainly may.

Bueche - opening

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1 MR. BUECHE: I'm going to confine myself to the issue
2 that's before the Court today, which is whether there's
3 documents that should have been turned over. I'm going to --

4 THE COURT: Okay.

5 MR. BUECHE: -- try and stay away from -- running
6 away from myself into questioning about assets. I'm just going
7 to stick to a couple of things about indications I've seen in
8 what's produced that more should be produced.

9 THE COURT: All right. Here's how we're going to
10 proceed. I want brief opening remarks from both sides. Then
11 YCB can call whatever witnesses it desires to prove its
12 position.

13 MR. BUECHE: Thank you, Your Honor.

14 THE COURT: All right. Opening statement on behalf
15 of YCB.

16 **OPENING STATEMENT ON BEHALF OF PLAINTIFF**

17 MR. BUECHE: Your Honor, this is a case where you're
18 very familiar with, but we sent a citation to discover assets
19 to UCF Trading, and among the things that we asked UCF Trading
20 was for transactions between it and UCF Company, which is a
21 company that has the same address, largely the same
22 shareholders, same business, same suppliers, same customers.

23 There have been indications that there have been
24 numerous transactions. However, because what I feel is
25 happening is that there has been a decision at some point in

Trejo - opening

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1 time to simply call the business UCF Company and not provide
2 documents on the grounds that the -- they have nothing to do
3 with UCF Trading assets, we have been stymied. We get excuses
4 from UCF Trading about things missing; and then from UCF
5 Company, we get objections.

6 And I think that we can -- that I will establish that
7 there are a few things that are obviously missing. I don't
8 want to go through everything that could possibly be missing
9 because that's for the citation, but there are some things that
10 strike me and I will show those to the Court on evidence.

11 Thank you.

12 OPENING STATEMENT ON BEHALF OF DEFENDANT

13 MR. TREJO: Good afternoon, Your Honor.

14 With regards to UCF Trading and UCF Company, there
15 was a -- it is our contention that there is no real overlap
16 between the two companies. UCF Company was formed on January
17 21st, 2011. However, it did not acquire its own bank account
18 until, I believe, October 12th of 2012.

19 That said, beginning January of 2011, UCF Trading did
20 not hold itself out as operating. It did not seek any sales.
21 It did not have any employees. The company was effectively
22 shut down to the public. Its skeleton still remained, but it
23 was not an active company. However, in that --

24 THE COURT: When you say "skeleton remained," what do
25 you mean?

Trejo - opening

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1 MR. TREJO: I mean, its bank account and its
2 invoicing were still being utilized by UCF Company but for
3 purposes of dealing with UCF Company suppliers and UCF Company
4 customers.

5 THE COURT: So UCF Company basically took over the
6 documents of UCF Trading and used them for UCF Company's
7 business?

8 MR. TREJO: Not necessarily the documents, Your
9 Honor, but the bank account. And my client --

10 THE COURT: How does one transact a bank account?

11 MR. TREJO: The issue is that in the Bahamas, it is
12 very difficult --

13 THE COURT: Well, don't you issue checks?

14 MR. TREJO: Yes, Your Honor.

15 THE COURT: Okay. And don't you make deposits?

16 MR. TREJO: Yes, Your Honor.

17 THE COURT: Isn't that how you transact a bank
18 account unless you use electronic means?

19 MR. TREJO: Correct, Your Honor.

20 THE COURT: And using electronic means, you have a
21 mechanism by which the sender and receiver know who it is
22 they're dealing with.

23 MR. TREJO: Correct, Your Honor.

24 THE COURT: Okay. And the person or the company they
25 were dealing with was UCF Company as of January 2011?

Trejo - opening

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1 MR. TREJO: Correct, Your Honor.

2 THE COURT: Okay.

3 MR. TREJO: And so in this case, it wasn't the ideal
4 situation, it wouldn't be the perfect way to do it if you were
5 going to advise someone how to do it, but keep in mind, Your
6 Honor, this is a company based out of the Bahamas. UCF Trading
7 is not an American company. UCF Company is not an American
8 company. Mr. Gagnon is not an American citizen. He's dealing
9 with Bahamian business practices and --

10 THE COURT: Well, doesn't he have to comply with the
11 United States law when he transacts business in the United
12 States, even though he's not a citizen?

13 MR. TREJO: To the extent that U.S. law is
14 applicable, that would be correct, Your Honor.

15 THE COURT: Okay.

16 MR. TREJO: But as far as for this particular
17 instance, I'm not sure what laws are relevant to what he was
18 doing. The law that was relevant was that it's very difficult
19 to obtain a U.S. dollar bank account in the Bahamas, and, as a
20 result, there was some transactions that UCF Company was making
21 that were done with UCF Trading's old bank account. And
22 because of this reason, there was no overlap in the two
23 companies as far as UCF Company and UCF Trading are concerned.

24 THE COURT: All right. You may call your first
25 witness.

Gagnon - direct by Bueche

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1 MR. BUECHE: I call Mr. Robert Gagnon.

2 THE COURT: Step up here, sir. Thank you. Raise
3 your right hand.

4 (Witness duly sworn.)

5 THE COURT: All right. Please be seated. That
6 microphone in front of you will amplify your voice. You can
7 hold it close, sir. Pull it down close to you so that it will
8 assist you.

9 ROBERT GAGNON, PLAINTIFF'S WITNESS, SWORN

10 DIRECT EXAMINATION

11 BY MR. BUECHE:

12 Q. Mr. Gagnon, what is your title with UCF Trading Company?

13 Or -- yeah, UCF Trading. I'm sorry.

14 A. President.

15 Q. And your --

16 THE COURT: Why don't we get the spelling of your
17 name and then we'll get into all the other details.

18 How do you -- would you state your name and spell
19 your last name, sir.

20 THE WITNESS: Okay. My name is Robert Gagnon, and
21 Gagnon is spelled G-a-g-n-o-n.

22 BY MR. BUECHE:

23 Q. And where do you live, Mr. Gagnon?

24 A. I live in Nassau, Bahamas.

25 Q. Is that your current residence?

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1 A. Yes, it is.

2 Q. Okay. Does it have a street address?

3 A. Yes, it does.

4 Q. May we have it for the record?

5 A. It's Brace Ridge Road, No. 10.

6 THE COURT: Brace Ridge Road, No. 10. How do you
7 spell Brace?

8 THE WITNESS: B-r-a-c-e.

9 THE COURT: Thank you.

10 BY MR. BUECHE:

11 Q. And what is your title with UCF Trading Company?

12 A. President.

13 Q. Are there any other officers of UCF Trading Company?

14 A. Yes.

15 Q. Were you the person who was tasked to collect documents
16 responsive to the citation to discover assets that was issued
17 to UCF Trading Company in this case?

18 A. Personally, yes.

19 Q. Are you also an officer of UCF Company?

20 A. Yes.

21 Q. And what's your title in that company?

22 A. President.

23 Q. Okay. And following some remarks that counsel made, when
24 did UCF Trading Company cease to do business?

25 A. UCF Trading?

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1 Q. UCF Trading. When did UCF Trading Company cease to do
2 business?

3 A. In January 2011.

4 Q. And after that, it had no sales and no purchases?

5 A. No sales, no purchases.

6 Q. Okay. And it was not -- was it paid for any old sales
7 after that point? Did they continue on into the future?

8 A. Do not understand your question.

9 Q. Well, there was no sales and no purchases after January of
10 2011; is that right?

11 A. That's correct.

12 Q. Okay. Did UCF Trading continue to have inventory at any
13 place after January of 2011?

14 A. No.

15 Q. Okay. What happened to the inventory in January of 2011?

16 A. Basically, we didn't keep inventory.

17 Q. Okay. I'm going to show your counsel what I marked as YCB
18 Exhibit 3-A, and I'm going to ask you if you recognize that
19 document.

20 THE COURT: Okay.

21 MR. BUECHE: Would you like a --

22 THE COURT: I'm the finder of fact, aren't I?

23 MR. BUECHE: Yes. Yes, you are, Your Honor.

24 THE COURT: Don't you think I ought to have one?

25 MR. BUECHE: Well, I thought he would see if he

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1 recognized it first and then I would tender it to the Court.

2 THE COURT: I think we ought to hand it to me first.

3 MR. BUECHE: I'm sorry, Your Honor. I forgot to ask
4 to approach.

5 (Document tendered to Court.)

6 THE COURT: I had actually expected documents to be
7 delivered in advance of this so I could review them.

8 All right. This is marked what again?

9 MR. BUECHE: 3-A, Your Honor.

10 THE COURT: All right. Plaintiff's Exhibit 3-A?

11 BY MR. BUECHE:

12 Q. Now, what is the --

13 THE COURT: Do you recognize it?

14 THE WITNESS: Yes.

15 THE COURT: All right.

16 BY MR. BUECHE:

17 Q. And what is the title on the top left of the paper?

18 A. Top left?

19 Q. Yeah.

20 A. "UCF Trading."

21 Q. "Company Limited," isn't it?

22 A. Yes.

23 Q. Okay. And the date of that invoice is 1/13/2012, isn't it?

24 THE COURT: I think you may have the wrong --

25 MR. BUECHE: I'm sorry. I thought --

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1 THE COURT: Mine's got --

2 THE WITNESS: I got 5/10/2012.

3 MR. BUECHE: Okay. Now --

4 THE COURT: Plaintiff's Exhibit 3-A is dated
5 5/10/2012.

6 MR. BUECHE: And if I may approach --

7 THE COURT: And that refers to the date of May 10th,
8 2012, is that correct?

9 THE WITNESS: This is May 12 -- no, May 10, May 10.

10 MR. BUECHE: If I may approach, Your Honor?

11 THE COURT: You may approach without permission now.

12 MR. BUECHE: Thank you.

13 THE COURT: Thank you.

14 (Document tendered to Court.)

15 THE COURT: But I do like to see the documents, so
16 when there's an error -- for example, you had the wrong date on
17 the last one -- then I could pick up on it.

18 MR. BUECHE: Yes. I wasn't really sure what we were
19 doing. I should have called your clerk ahead of time, Your
20 Honor, to get --

21 THE COURT: We're having an evidentiary hearing --

22 MR. BUECHE: Yes.

23 THE COURT: -- to prove your motion.

24 MR. BUECHE: Yes.

25 BY MR. BUECHE:

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1 Q. I'm going to show you what's been marked as Exhibit 3, and
2 I would ask you to read -- ask if you recognize that document?

3 THE COURT: Plaintiff's Exhibit 3. Are you going to
4 offer Plaintiff's Exhibit 3-A?

5 MR. BUECHE: Yes. I will offer 3-A into evidence,
6 Your Honor.

7 THE COURT: Any objection?

8 MR. COSENTINO: No.

9 THE COURT: Plaintiff's Exhibit 3-A is admitted in
10 evidence.

11 (Plaintiff's Exhibit 3-A received in evidence.)

12 THE COURT: Now we're on Plaintiff's Exhibit 3.
13 Do you recognize it, sir?

14 THE WITNESS: Yes.

15 BY MR. BUECHE:

16 Q. And what is that document, sir?

17 A. It's an invoice.

18 Q. From UCF Trading Company, isn't that right?

19 A. Yes.

20 Q. And the date on that invoice is January of 2012, isn't that
21 right?

22 A. It's January 16, 2012.

23 Q. And that's over a year after you said that UCF Trading had
24 ceased buying and selling, isn't that right?

25 A. I think that we explain that UCF Company was incorporated

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1 on the 21st of January, 2011, but actually starting operation
2 in October of 2012.

3 THE COURT: I didn't hear that in your counsel --
4 well, October 12th of 2012 is when it got a bank account. So
5 you kept doing business as UCF Trading Company, right?

6 THE WITNESS: All the marketing was done under UCF
7 Company, but UCF Trading was acting as an agent for UCF
8 Company.

9 THE COURT: Oh, okay.

10 THE WITNESS: In waiting of having a business
11 license. Because you have to understand that in the Bahamas --

12 THE COURT: Who had a business license?

13 THE WITNESS: You to operate a company in the
14 Bahamas --

15 THE COURT: Sir, I asked you a question.

16 THE WITNESS: Yes.

17 THE COURT: You have to answer the questions asked by
18 counsel or by me. Who had the business license?

19 THE WITNESS: Who has a -- the business license?

20 THE COURT: That was the question, yes. You said
21 there was a business license. Who had the business license?

22 THE WITNESS: UCF Trading has the business license.

23 THE COURT: Okay. All right. Are you offering
24 Plaintiff's Exhibit 3?

25 MR. BUECHE: Yes, Your Honor.

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1 THE COURT: Any objection?

2 MR. COSENTINO: No, Your Honor.

3 THE COURT: Plaintiff's Exhibit 3 is admitted in
4 evidence.

5 (Plaintiff's Exhibit 3 received in evidence.)

6 BY MR. BUECHE:

7 Q. Now, Mr. Gagnon, do you recall reviewing the rider to the
8 citation to discover assets that was served on UCF Trading?

9 A. If I recall -- I'm sorry. I don't understand.

10 Q. Do you recall reviewing the citation to discover assets
11 that was served on UCF Trading?

12 A. Yes.

13 Q. And do you recall the request for all documents relating to
14 any payments or transfers of anything of value, whether or not
15 for return consideration, whether tangible or intangible, since
16 July of 2008 by UCF Company to UCF Trading Company or by UCF
17 Company to UCF Company?

18 A. Yes.

19 THE COURT: You're reading from a document. May I
20 have that?

21 MR. BUECHE: Yeah. It's the citation to discover
22 assets, Your Honor.

23 THE COURT: Okay.

24 (Document tendered to Court.)

25 THE COURT: I don't recall being served with it. Is

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1 this an exhibit?

2 MR. BUECHE: It could be marked as an exhibit, Your
3 Honor.

4 THE COURT: Okay. Would you like it to be?

5 MR. BUECHE: Yes, sir.

6 THE COURT: What exhibit number would you like on it?

7 MR. BUECHE: 4. No, excuse me.

8 THE COURT: All right. Plaintiff's --

9 MR. BUECHE: 7.

10 THE COURT: -- Exhibit --

11 MR. BUECHE: 7, please. I've already marked --

12 THE COURT: Plaintiff's Exhibit 7?

13 MR. BUECHE: Yes.

14 THE COURT: All right. It wasn't attached to your
15 motion, was it?

16 MR. BUECHE: I don't know, Your Honor. I probably
17 just referred to it in the motion because it's in the case
18 file.

19 THE COURT: Is it in the case file?

20 MR. BUECHE: Yes.

21 THE COURT: What's the docket number?

22 MR. BUECHE: I don't know off the top of my head,
23 Your Honor. I'm sorry.

24 THE COURT: Well, then how would I find it?

25 MR. BUECHE: It -- well, it was filed October 1st of

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1 2013.

2 THE COURT: All right. Plaintiff's Exhibit 7.

3 MR. BUECHE: Okay.

4 BY MR. BUECHE:

5 Q. Mr. Gagnon, have you provided all the documents that relate
6 to any payments or transfers of assets of any kind from UCF
7 Trading to UCF Company or UCF Company to UCF Trading?

8 A. Yes, yes.

9 Q. Okay. Let me show you what's been marked as YCB Exhibit
10 3-B.

11 THE COURT: Plaintiff's Exhibit 3-B?

12 MR. BUECHE: Yes.

13 THE COURT: All right.

14 BY MR. BUECHE:

15 Q. And ask you to look at the second page, the one that's
16 marked "Dexter 13" at the bottom.

17 Do you recognize that document?

18 A. Yes.

19 Q. And it's an invoice from UCF Company to Dexter Axle, isn't
20 it?

21 A. Yes.

22 Q. And the product that's being sold to Dexter Axle is "CMC
23 taper roller bearings," isn't that correct?

24 A. Yes.

25 Q. Now, isn't it true that --

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1 THE COURT: I'm sorry. You said it's "CMC taper
2 roller bearings"?

3 MR. BUECHE: Tapered roller bearings, Your Honor.

4 THE COURT: All right. I see the "taper roller
5 bearings." I see "CMC#83."

6 MR. BUECHE: Right.

7 THE COURT: Okay.

8 BY MR. BUECHE:

9 Q. Isn't it true, Mr. Gagnon, that UCF Company got those
10 tapered roller bearings from UCF Trading?

11 A. Yes.

12 Q. So at some point in time, there actually was a transfer of
13 assets, inventory maybe, from UCF Trading to UCF Company.

14 Is there any documentation that has yet to be
15 produced that would show any price paid for those tapered
16 roller bearings or the date they were transferred or any return
17 consideration, anything?

18 A. No.

19 Q. Okay.

20 THE COURT: Are you offering Plaintiff's Exhibit 3-B?

21 MR. BUECHE: Yes, Your Honor.

22 THE COURT: All the pages?

23 MR. BUECHE: Sure, Your Honor.

24 THE COURT: All right. It's admitted in evidence.

25 (Plaintiff's Exhibit 3-B received in evidence.)

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1 MR. COSENTINO: No objection, Your Honor.

2 THE COURT: Thank you.

3 MR. BUECHE: Excuse me, Your Honor. I'm missing a
4 page.

5 THE COURT: While you're going through your papers,
6 sir, could you turn to the front page of Plaintiff's Exhibit
7 3-B, very first page. Do you have it in front of you, sir?
8 It's titled Bank to Bank Transfer. Do you see it?

9 THE WITNESS: 3-B?

10 THE COURT: Yes, Plaintiff's Exhibit 3-B. Well, it's
11 3-B -- it's down on the side where it says "Dexter0012."

12 THE WITNESS: Uh-huh.

13 THE COURT: Okay. All right. That very first page,
14 Bank to Bank Transfer, Transmittal, do you see that?

15 THE WITNESS: Yes.

16 THE COURT: What is that?

17 THE WITNESS: This is provided by the bank.

18 THE COURT: And what does the bank provide it for?

19 THE WITNESS: For an incoming funds.

20 THE COURT: Incoming funds?

21 THE WITNESS: Uh-huh.

22 THE COURT: Into UCF Trading?

23 THE WITNESS: Yes.

24 THE COURT: Transmittal date was January 8, 2013?

25 Right below the words "UCF Trading, Vendor #UN1251"? Do you

1 see that?

2 THE WITNESS: January 8, 2013.

3 THE COURT: Right. So money was being transmitted
4 into UCF Trading?

5 THE WITNESS: That's what it appears.

6 THE COURT: Yeah.

7 BY MR. BUECHE:

8 Q. Mr. Gagnon, have you -- has any checks or wire transfer
9 informations for UCF Trading been produced at all?

10 A. We -- we produce these documents for every month from our
11 bank.

12 Q. But no canceled checks, no deposit slips, no wire
13 informations have been produced, isn't that right?

14 A. We don't have canceled check.

15 Q. Would the bank have canceled checks?

16 A. We don't have canceled check.

17 Q. Would the bank have canceled checks, records of canceled
18 checks?

19 MR. COSENTINO: I'm going to object insofar as it
20 calls for speculation.

21 THE COURT: All right. Sustained.

22 Tell me how you transact business with your bank.

23 THE WITNESS: Okay. First of all, we produce an
24 invoice. This invoice is sent to the customer along with the
25 merchandise. The customer accept the merchandise. After the

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1 terms established with the customer, the customer will make a
2 payment. The payment could be done by check or could be done
3 by wire transfer to our company. And the check is deposited
4 into the bank, and the bank will put this money into our
5 account. If it's a wire transfer, then it is done directly by
6 the bank into our -- into the company bank account.

7 And then the company bank account is there to pay the
8 supplier by mostly wire transfer, because we deal with foreign
9 companies, so very seldom that it will be paid by check. It
10 will be paid by wire transfer from our account through our bank
11 to the bank of the supplier. So this is the way we deal with
12 the bank.

13 THE COURT: Thank you.

14 BY MR. BUECHE:

15 Q. If I may have the copies I gave you? Thank you. And I'm
16 going to present what's been marked as Exhibit No. 5.

17 THE COURT: Plaintiff's Exhibit 5?

18 MR. BUECHE: Exhibit 5 is an invoice listing that was
19 produced to me by UCF Trade -- UCF Company.

20 (Document tendered to Court.)

21 THE COURT: In response to your citation?

22 MR. BUECHE: Yes.

23 THE COURT: In response to the citation, Plaintiff's
24 Exhibit 7?

25 MR. BUECHE: Yes, Your Honor. Well, no. That would

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1 be Plaintiff's Exhibit 8. I'm --

2 THE COURT: Okay.

3 MR. BUECHE: That would be the citation to UCF
4 Company.

5 THE COURT: I don't have 8.

6 MR. BUECHE: No. I mean, it's just like I didn't
7 bring 7, Your Honor. I'm sorry.

8 THE COURT: All right. You are back on Plaintiff's
9 Exhibit 5.

10 BY MR. BUECHE:

11 Q. If I may point out to you at 1/8/13, invoice 7723, there's
12 an invoice issued to the UCF Trading Company Limited. Why
13 would UCF Trading issue an invoice -- or, excuse me, why would
14 UCF Company issue an invoice to UCF Trading?

15 A. Okay. Your question is why UCF Company would issue an
16 invoice to UCF Trading?

17 Q. Yes.

18 A. I presume that it was to purchase goods from UCF Trading
19 Company.

20 THE COURT: If it was for no amount of money, zero
21 dollars, does that change your view?

22 THE WITNESS: Because the transaction was for zero
23 dollars.

24 THE COURT: Right. I mean, you're purchasing for
25 zero dollars?

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1 THE WITNESS: Yes.

2 THE COURT: Yes?

3 THE WITNESS: I mean, if there is a transaction that
4 didn't need any money, then it's zero dollars.

5 THE COURT: What would UCF Company purchase from UCF
6 Trading for zero dollars?

7 THE WITNESS: I don't know.

8 THE COURT: Okay.

9 BY MR. BUECHE:

10 Q. There would be a copy of the purchase -- of a purchase
11 order, wouldn't there? Or a copy -- at least a copy of the
12 invoice that was issued, wouldn't there?

13 A. Well, for everything that you buy, for everything that you
14 sell, you have a purchase order and you have an invoice.

15 Q. Have any purchase orders or invoices to or by or between
16 UCF Company and UCF Trading been produced? They haven't, have
17 they?

18 A. I mean, maybe, but I don't know.

19 Q. Let me ask you this. You told -- your testimony prior,
20 unless I'm mistaken, was that UCF Trading had stopped selling,
21 stopped buying back in January of 2011, but isn't your
22 testimony now that it was actually selling something to UCF or
23 buying something from UCF Company in January of 2013?

24 A. I mean, there were so many transaction that I cannot tell
25 you each transaction, I'm not aware of each transaction.

Gagnon - direct by Bueche

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1 Q. Well, but these companies keep records, do they not? Does
2 UCF Trading still keep records somewhere?

3 A. They do keep record, but the records are not the same as
4 what you maybe think that they do in the United States or North
5 America. I mean, they keep record like it is in the Bahamas,
6 so sometimes the record is different.

7 Q. Okay. I understand that. But you -- if an invoice was
8 issued to UCF Trading, as it seems to have been, by UCF
9 Company, would that document simply have been thrown away?

10 A. I don't think so. I think it's still there.

11 Q. And the purchase order, would that have been thrown away?

12 A. I don't think so. This is year 2013. I don't think so.
13 Still in the computer. This is why we made a list of all the
14 transaction, whatever they were zero or whatever they represent
15 a certain amount of money. You ask us for documents, so we
16 made a list. Otherwise, I have to bring a truck.

17 Q. But I wasn't -- I didn't actually get the invoice itself
18 that was issued to UCF Trading, so I can't tell whether that
19 was for a small amount of goods or for a huge amount of goods,
20 or for a couple of tables or whether it was significant.

21 A. Well, I mean, if you --

22 Q. Why can't invoices --

23 A. If you want to have a copy of this particular transaction,
24 I think it is possible to get you that.

25 MR. BUECHE: Okay. At this point, Your Honor, I have

Gagnon - direct by Bueche

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1 made -- I grabbed the wrong check registers, so I don't have
2 copies of something. If I could have a five-minute recess to
3 go make copies or --

4 THE COURT: Okay. How much longer will you be on
5 direct examination of this witness?

6 MR. BUECHE: I plan to finish up probably 15 minutes
7 after that, no more.

8 THE COURT: All right. Okay. You can make copies in
9 five minutes, you say?

10 MR. BUECHE: Yes.

11 THE COURT: Okay. All right. We will take a
12 five-minute recess.

13 THE WITNESS: What do I do?

14 THE COURT: You may step down and take a break and
15 then be back here in five minutes so that we can resume with
16 your testimony.

17 THE WITNESS: Thank you, sir.

18 THE COURT: Thank you.

19 (Recess from 2:36 p.m. until 2:51 p.m.)

20 (Documents tendered to Court.)

21 MR. BUECHE: I have marked it YCB Exhibit No. 4.

22 THE COURT: All right.

23 MR. BUECHE: I'm tendering it to Mr. Gagnon.

24 BY MR. BUECHE:

25 Q. Mr. Gagnon, do you recognize that as a list of invoices of

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1 UCF Company?

2 A. Yes.

3 Q. I just want to point out, isn't it true that exhibit --
4 what's been marked as Exhibit 3, which is invoice No. 7630 --

5 THE COURT: Plaintiff's Exhibit 3?

6 MR. BUECHE: Plaintiff's Exhibit 3, which is invoice
7 76 -- 7630 shows up in the list of invoices of UCF Company.

8 THE COURT: Which is Plaintiff's Exhibit 4?

9 MR. BUECHE: Yes, Your Honor.

10 THE COURT: And Plaintiff's Exhibit 5 is UCF Trading?
11 Just trying to keep it straight here.

12 MR. BUECHE: Yes, Your Honor.

13 THE COURT: Okay. Thank you.

14 All right. Rather than have the witness scroll
15 through the list, which is Plaintiff's Exhibit 4, why don't you
16 help him out.

17 MR. BUECHE: Yeah. I've actually marked it, right
18 there.

19 THE COURT: I don't see it marked on mine.

20 MR. BUECHE: No. I didn't mark it on yours, Your
21 Honor.

22 THE COURT: Okay. Why don't you help me out.

23 MR. BUECHE: Okay. It's on the first page, 73 --
24 (Counsel approaches Court's bench.)

25 THE COURT REPORTER: Sir, sir --

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1 THE COURT: You can't walk up here.

2 MR. BUECHE: I'm sorry. I was actually going to --

3 THE COURT: That's not proper procedure.

4 MR. BUECHE: I'm sorry.

5 (Counsel returns to well of courtroom.)

6 THE COURT: That's not proper procedure.

7 MR. BUECHE: No, it's --

8 THE COURT: Just refer me to the invoice number.

9 They're sequential.

10 MR. BUECHE: 7360, Your Honor.

11 THE COURT: Thank you.

12 MR. BUECHE: To Dexter Axle.

13 BY MR. BUECHE:

14 Q. And that's actually an invoice that's been marked as
15 Exhibit No. 3, am I correct?

16 A. This is No. 3.

17 Q. Right.

18 A. This is No. 4.

19 Q. Right.

20 A. Well, we explain before that from 2011 to 2012, all the
21 marketing invoices were part of UCF Company, but banking --
22 money in, money out -- was done through UCF Trading because of
23 no permit in the case of UCF Company. So they were working as
24 agent.

25 So here, as Exhibit 3, you have an invoice from UCF

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1 Trading in the case of Dexter Axle Company, and it's listed in
2 UCF Company as sales from UCF Company.

3 Q. Okay. Let me show you marked up --

4 MR. BUECHE: And this one I have marked for Your
5 Honor to see --

6 THE COURT: All right.

7 MR. BUECHE: -- what I'm pointing at.

8 (Document tendered to Court.)

9 BY MR. BUECHE:

10 Q. And show you and ask you if you recognize this as a monthly
11 statement for the account of UCF Trading at -- I'm sorry, UCF
12 Company at First Caribbean International Bank?

13 A. I have to correct. Your Exhibit 2 is UCF Trading.

14 Q. Okay. So UCF 2 is a UCF Trading account?

15 A. Yes. There's --

16 THE COURT: Plaintiff's --

17 BY THE WITNESS:

18 A. The number that it is on top is a UCF Trading account.

19 BY MR. BUECHE:

20 Q. Okay. And --

21 THE COURT: When you say "the number on top," which
22 number are you referring to --

23 THE WITNESS: Okay. It say that --

24 THE COURT: -- on Plaintiff's Exhibit 2.

25 THE WITNESS: -- "Account Activity for Account Name:

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1 Bahamas, 20315516." This is UCF Trading.

2 THE COURT: Oh, okay.

3 BY MR. BUECHE:

4 Q. Who -- four down, there's an entry on September 10th, 20 --
5 excuse me. I think that's actually October 9th. No, that's
6 September 10th, 2012, from --

7 THE COURT: Well, how do you know it's September 12?

8 MR. BUECHE: Well, I --

9 MR. COSENTINO: If I may, Your Honor?

10 MR. BUECHE: Is there --

11 MR. COSENTINO: To verify, the dates are done
12 differently in the Bahamas.

13 MR. BUECHE: It's an --

14 THE COURT: That's exactly why I asked the first
15 question I asked about May 10th of 2012, and the witness told
16 me it was May 10th, 2012.

17 MR. COSENTINO: I just realized it, in looking, that
18 there's no 22nd month of the year of the --

19 THE COURT: There's no 31st --

20 MR. COSENTINO: Correct.

21 MR. BUECHE: Right.

22 THE COURT: -- month of the year either.

23 MR. BUECHE: So it is October 9th, yes.

24 THE COURT: How do you know it's October 9?

25 MR. BUECHE: Because there -- this is supposedly

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1 using the same convention all the way up and down.

2 THE COURT: Okay.

3 MR. BUECHE: And there's a 31st of something, and
4 that would have -- that would have to be date, not a month.

5 THE COURT: Maybe you should ask the witness.

6 MR. BUECHE: Okay.

7 BY MR. BUECHE:

8 Q. You've lived in the Bahamas, Mr. Gagnon. What's the
9 convention for telling a date? Is it the date first, then the
10 month?

11 A. It depends. You know, if you're English or if you're
12 American, they will use different dates.

13 Q. Okay.

14 A. If you're French, you're going to use a different way of
15 doing your dates. But the bank used the English way.

16 THE COURT: All right. The bank used the English
17 way. Thank you.

18 BY MR. BUECHE:

19 Q. And is the English way the day is first, then the month?

20 A. Day first, month --

21 THE COURT: Day, month, year. Let's move on.

22 MR. BUECHE: All right.

23 BY MR. BUECHE:

24 Q. The four -- the fifth entry down, it says From and there's
25 a number there, and there's a credit of \$494,419.96.

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1 THE COURT: Plaintiff's Exhibit 2.

2 MR. BUECHE: Yes.

3 BY MR. BUECHE:

4 Q. That is actually a transfer from UCF Company's account,
5 isn't it?

6 A. Yeah, this is the loan from the bank.

7 Q. From the bank?

8 A. This is a bank loan.

9 Q. To whom?

10 A. To UCF Trading.

11 THE COURT: Okay.

12 BY MR. BUECHE:

13 Q. In October of 2012? Have any of those loan documents been
14 produced?

15 A. I mean, the loan is from a long time and it could be
16 produce.

17 Q. Okay.

18 THE COURT: That wasn't the question. Has it been
19 produced?

20 THE WITNESS: No, it hasn't been produce except
21 produce by the bank here as the statement of the bank, but not
22 as a contract.

23 BY MR. BUECHE:

24 Q. And this money came by way of a UCF Company account, isn't
25 that right? That is a UCF Company account number that is on

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1 that line, that is, 201628951? That's a UCF Company account,
2 isn't it?

3 A. Yes.

4 Q. Down towards the bottom, I have circled transactions
5 that -- actually, I'm only concerned about the bottom one,
6 which is "UCF Trading," and it's a check for \$5,000 -- or a
7 withdrawal of \$5,000.

8 What can you tell me about that transaction? Would
9 there be any documents attached to it?

10 A. It's a withdrawal.

11 Q. I'm sorry?

12 A. I mean, this is money out.

13 Q. Right. Why would there be a -- is it a check to UCF
14 Trading?

15 A. I wouldn't know.

16 Q. Okay. And there's been no actual physical checks or wire
17 transfers produced to us today so that we could see better
18 descriptions of what these items are, isn't that right?

19 A. Could you repeat that again?

20 Q. There's been no checks or wire transfers or deposit
21 materials that would underlie these monthly statements so that
22 we could see where the money comes from and where it goes to?

23 A. We would have to ask the bank to produce such a document.

24 Q. Have you asked the bank to produce them?

25 A. We asked the bank to produce a statement, which they gave

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1 us a statement, but they didn't give us the actual check
2 return. I mean, this is different.

3 Q. Where else did -- what warehouses did UCF Trading have
4 inventory in, say, January of 2011?

5 I'm sorry. When did you say UCF Trading stopped
6 buying and selling?

7 THE COURT: Are you withdrawing the last question?

8 MR. BUECHE: Yes, I am. Thank you.

9 BY MR. BUECHE:

10 Q. Are you saying that UCF Trading stopped business in January
11 of 2011 or 2012?

12 A. 20 -- 2011.

13 Q. Okay. Were there any -- was there any inventory at any
14 warehouses that belonged to UCF Trading just before it stopped
15 business?

16 A. No.

17 Q. Okay. How about in, say, December of 2010? Did -- was
18 there any inventory in any warehouses?

19 A. I wouldn't be able to tell you every month of the
20 inventory. I wouldn't be able to tell you that. But I know
21 that in January, we had no more inventory.

22 Q. In January of 2011?

23 A. 2011.

24 MR. BUECHE: All right. I'll pass the witness.

25 THE COURT: All right. Let me inform counsel that

Gagnon - cross by Cosentino

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1 during the break, I went to the website listed as paragraph 8
2 of the motion filed by the plaintiff and observed that website.

3 You may proceed.

4 MR. COSENTINO: Thank you, Your Honor.

5 THE COURT: You may inquire about the website, if you
6 desire. It's --

7 MR. COSENTINO: Mr. Gagnon --

8 THE COURT: -- available to you folks as it is to me.
9 I'm just informing you that I have observed it.

10 MR. COSENTINO: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. COSENTINO:

13 Q. Mr. Gagnon, you were asked questions on direct examination
14 by Mr. Bueche with regard to documents that you had produced,
15 and that's why we're here today, to make sure that you produced
16 everything you were asked.

17 Have any of the documents that Mr. Bueche asked you
18 to produce, anything related to any bank transactions that has
19 not heretofore been produced, do you or does UCF Trading
20 Company have anywhere that you have access to those documents
21 readily at hand?

22 THE COURT: There are a lot of provisos in that
23 question.

24 MR. COSENTINO: Okay.

25 THE COURT: "Readily at hand."

Gagnon - cross by Cosentino

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1 MR. COSENTINO: I'm sorry.

2 THE COURT: "You have access to."

3 MR. COSENTINO: I'm sorry.

4 THE COURT: I mean, this man is the president of the
5 company.

6 MR. COSENTINO: Well, I understand.

7 THE COURT: He's president of both companies.

8 MR. COSENTINO: That is correct.

9 THE COURT: So he is the person in charge of both
10 companies. So, as far as "has access to," there should be no
11 proviso on that at all.

12 MR. COSENTINO: I understand, Judge.

13 THE COURT: He has complete access.

14 BY MR. COSENTINO:

15 Q. Mr. Gagnon, you were asked to produce documents relating to
16 bank transactions for UCF Trading Company, correct?

17 A. Yes.

18 Q. Okay. During the course of this post-judgment proceeding,
19 did you turn over to counsel bank statements for UCF Trading
20 Company for the years 2011 and 2012?

21 A. All what we had.

22 Q. Okay. Did you turn over the sum and substance, everything
23 that you had with regard to those bank transactions?

24 A. Everything that we had.

25 Q. Okay. With regard to the specific invoices that Mr. Bueche

Gagnon - cross by Cosentino

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1 has asked you about, I refer you to Plaintiff's Exhibit 4,
2 Plaintiff's Exhibit 5, which are -- which is a list of the
3 invoices that were generated by UCF Company.

4 Do you recognize these two documents?

5 **A.** I don't have them --

6 **THE COURT:** Let me make sure I've got it --

7 **THE WITNESS:** You mean YCB No. 4?

8 **MR. COSENTINO:** Wait, wait.

9 **THE COURT:** YCB Company is Exhibit 4.

10 **MR. COSENTINO:** Yes. I'm sorry. What --

11 **THE COURT:** I'm not exactly sure what Exhibit 5 is.

12 **THE WITNESS:** I don't have Exhibit 5.

13 **THE COURT:** Mr. Bueche, what do you purport Exhibit 5
14 is?

15 **MR. BUECHE:** Exhibit 5 is invoices from -- or
16 invoices of 2013 from UCF Company. So these are 2013 invoices.

17 **THE COURT:** Who? From YCB Company?

18 **MR. BUECHE:** From UCF Company.

19 **THE COURT:** I'm sorry. UCF Company?

20 **MR. BUECHE:** Yeah.

21 **THE COURT:** You've got "YCB" on here, and --

22 **MR. BUECHE:** I scribbled --

23 **THE COURT:** -- that screwed me up.

24 **MR. BUECHE:** -- just who's offering the exhibit, Your
25 Honor.

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1 THE COURT: Yeah. Well, "Plaintiff" is what I used
2 so there wouldn't be confusion, so that's why I wanted you to
3 use "Plaintiff." You have insisted on adding the letters.

4 So both are UCF Company. One is for 2013, one is for
5 2012; is that correct?

6 MR. BUECHE: Yes, sir.

7 THE COURT: All right.

8 BY MR. COSENTINO:

9 Q. Now, as the president --

10 THE COURT: And there's no objection to those being
11 admitted in evidence?

12 MR. COSENTINO: There is not.

13 THE COURT: Okay.

14 BY MR. COSENTINO:

15 Q. As the president of UCF Company, Mr. Gagnon --

16 THE COURT: Plaintiff's Exhibits 5 and 4 are admitted
17 in evidence.

18 (Plaintiff's Exhibits 4 and 5 received in evidence.)

19 THE COURT: You may proceed.

20 BY MR. COSENTINO:

21 Q. As the judge has pointed out, you have access to documents
22 for both companies. In response to the citation that was
23 served on both UCF -- the citations, rather, that were served
24 on UCF and UCF Trading, did you produce these documents, which
25 is a breakdown of the invoices generated by UCF Company?

1 A. Yes, I did.

2 Q. Now, you had mentioned, I believe, during direct
3 examination that if you were to produce all of the invoices
4 referenced in these documents, it would take boxes and boxes or
5 whatever the quote might have been. I'm not sure.

6 THE COURT: He said truckloads.

7 MR. COSENTINO: Truckloads. I'm sorry.

8 BY MR. COSENTINO:

9 Q. UCF Company has these documents available someplace,
10 somewhere, presumably in the Bahamas, where you could pick out
11 any one of these invoices if it was specifically requested by
12 Mr. Bueche; is that correct?

13 A. Yes.

14 Q. Okay.

15 THE COURT: Well, actually, don't you have them on
16 the computer?

17 THE WITNESS: Yes.

18 THE COURT: Yeah. You could actually transmit them,
19 not in trucks, but you can transmit them electronically,
20 correct?

21 THE WITNESS: Yes.

22 THE COURT: Yeah.

23 THE WITNESS: Of course.

24 THE COURT: So it's not really truckloads.

25 MR. COSENTINO: Sure.

1 THE COURT: It's just a number of transmittals
2 electronically.

3 MR. COSENTINO: Right.

4 BY MR. COSENTINO:

5 Q. So you could put all of these invoices onto a flash drive
6 or a zip drive and send it electronically, is that correct?

7 A. Yes.

8 Q. Okay. Now, there seems to be -- I'd like to turn your
9 attention to what's been marked as YCB Exhibit 3-B.

10 THE COURT: Well, can we use "Plaintiff's"?

11 MR. COSENTINO: Plaintiff's Exhibit 3-B.

12 THE COURT: It's so much easier.

13 MR. COSENTINO: I'm sorry, Your Honor.

14 THE COURT: It's the plaintiff that's also the moving
15 party. It's just easier.

16 MR. COSENTINO: Understood.

17 THE COURT: "Plaintiff." And any initial related to
18 the responding party for the defendant.

19 MR. COSENTINO: I understand.

20 THE COURT: Yeah.

21 BY MR. COSENTINO:

22 Q. Now, the very first page is the bank to bank transfer,
23 transmittal, and it says "To: UCF Trading."

24 Do you have this document in front of you still?

25 A. Yes.

Gagnon - cross by Cosentino

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1 Q. Okay. Could you please pull it out so you can reference
2 it. I wanted to ask you a couple questions about it.

3 This document on top, the very first page of Exhibit
4 3-B, this is not a document that you generated, correct?

5 A. This is a document that we had in our file.

6 Q. I understand. I asked if you -- if this was a document
7 that you generated or your company generated, this first page.

8 A. This is generated by our bank.

9 Q. Okay. Now, it looks like --

10 THE COURT: May I just inquire? Do you recognize the
11 signatures on there?

12 THE WITNESS: After the -- during the break, I look
13 at this thing and it comes from a payment from a customer.

14 THE COURT: Right.

15 THE WITNESS: Dexter. It's mark. And these are
16 coming from Wachovia Bank, so I don't know the signatures of
17 the directors of Wachovia Bank.

18 THE COURT: Okay.

19 THE WITNESS: But it came to our account.

20 BY MR. COSENTINO:

21 Q. Corresponding with the bank to bank transfer, transmittal,
22 Exhibit 3-B, is an invoice that is invoice No. 7716, and it
23 says "UCF Company Limited." This is the second page of Exhibit
24 3-B.

25 Is it your testimony, Mr. Gagnon, as you sit here

Gagnon - cross by Cosentino

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1 today, that this bank to bank transfer, transmittal reflects
2 payments that were made to UCF Company or UCF Trading Company?

3 A. To UCF Company.

4 Q. Okay. I'll turn your attention back to Exhibit 5.

5 THE COURT: Plaintiff's Exhibit 5.

6 BY THE WITNESS:

7 A. I don't have Exhibit 5.

8 MR. BUECHE: I have it. I took it back.

9 MR. COSENTINO: Permission to approach? He can use
10 mine.

11 THE COURT: You may.

12 BY MR. COSENTINO:

13 Q. Mr. Gagnon, do you see on Exhibit 5, towards the top, a
14 reference to invoice 7716?

15 A. Yes. It's Dexter Axle Company.

16 Q. And just so we're clear, that is an invoice list for UCF
17 Company, correct?

18 A. Yes, yes.

19 Q. Now, you testified that from the time UCF Company was
20 incorporated in the Bahamas, in 2011, for nearly two years
21 thereafter, I think, it did not have a bank account.

22 Could you elaborate for us, because I'm not sure that
23 we're clear, why it was that UCF Company never established a
24 bank account of its own while it was doing business from 2011
25 on?

Gagnon - cross by Cosentino

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1 THE COURT: Well, wait. You have now posed a
2 question on into the present and into the future.

3 So it's never had a bank account?

4 MR. COSENTINO: No, no. It has one now, Your Honor.

5 THE COURT: Well, you just said "never had a bank
6 account."

7 MR. COSENTINO: I'm sorry. That was a poor question.

8 THE COURT: Yeah.

9 BY MR. COSENTINO:

10 Q. Why it did not have a bank account for the first nearly two
11 years of its formation -- from two years of its formation on,
12 why it did not have a bank account?

13 A. UCF Company was incorporated on the 21st of January of
14 2011.

15 Q. Okay.

16 A. And the rules of the Bahamas is that you have to have a
17 business license to have a bank account in U.S. dollars. You
18 could have bank account in Bahamian dollars -- a lot of people
19 transact in Bahamian dollars -- but we were connected to
20 foreign countries, so we had to deal with U.S. dollars. So you
21 have to have a business license, and the business license was
22 given to UCF Company sometime at the beginning of 2012.

23 In 2012, we went to our bank and we ask for -- to
24 open a bank account in U.S. dollars for UCF Company, which we
25 did in October of 2012. And until you have a bank account,

1 there's nowhere to go.

2 Q. So because UCF Company did not have a bank account, did UCF
3 Company enter into an arrangement with UCF Trading Company
4 whereby, as you testified, UCF Trading Company would act as an
5 agent for UCF Company?

6 A. Exactly. So during that time --

7 THE COURT: Is that written down, like a written
8 contract, or did you just agree with yourself, as the president
9 of both companies, that that's how you were going to do
10 business?

11 THE WITNESS: Well, we had -- there was no written
12 contract between the two companies. It's just that UCF Trading
13 owed so many dollars to me that we could do some transaction
14 without any documents sign. So we just use the bank account of
15 UCF Trading to do the transaction until UCF Company was able to
16 obtain a bank account.

17 BY MR. COSENTINO:

18 Q. In --

19 THE COURT: And when was the UCF Trading bank account
20 opened again?

21 THE WITNESS: Well, UCF Trading bank account was open
22 20 years ago.

23 THE COURT: Okay. And UCF Company's bank account, it
24 was opened when?

25 THE WITNESS: In -- UCF Company bank account was open

1 in October of 2012.

2 BY MR. COSENTINO:

3 Q. After the business license was issued by the government of
4 the Bahamas?

5 A. Yes.

6 Q. Okay. In Mr. Bueche's petition for rule to show cause, he
7 asks for tax returns. Are there any tax returns to be produced
8 by UCF Trading Company?

9 A. I mean, it's well known that the Bahamas is a fiscal
10 paradise, and there's no such thing as income tax, so nobody is
11 paying any income tax in the Bahamas.

12 Q. In his petition for rule to show cause --

13 THE COURT: Are there other tax returns?

14 THE WITNESS: There is real estate tax and there's
15 duty tax when you import goods into the Bahamas.

16 THE COURT: Do you have any of those tax returns?

17 THE WITNESS: If I -- pardon me? May I -- I didn't
18 hear it.

19 THE COURT: Do you?

20 THE WITNESS: If I have any other tax?

21 THE COURT: Yeah.

22 THE WITNESS: Well, we're paying real estate tax and
23 we're paying duty tax on goods that we import. Like if you
24 want to import a car, then you have to pay duty on.

25 BY MR. COSENTINO:

1 Q. Mr. Bueche also in his petition for rule to show cause
2 raises the fact that there were no bank account -- there was no
3 bank account information produced for UCF Trading.

4 I ask you initially, the bank account information
5 that you produced from UCF Trading Company, is that all of what
6 you have in terms of bank account information for UCF Trading
7 Company?

8 A. Yes.

9 Q. Mr. Bueche raises the fact in his petition for rule to show
10 cause that nothing has been produced with respect to payments
11 from either, I think, UCF Company or UCF Trading Company to you
12 as the president.

13 Insofar as you know, has your counsel produced that
14 information to Mr. Bueche?

15 A. My salary?

16 Q. Yes.

17 A. You -- I have produce a list of all my salary since 2009.

18 MR. COSENTINO: If I may just take a moment, Your
19 Honor?

20 THE COURT: All right.

21 (Pause.)

22 MR. COSENTINO: I don't think I have anything further
23 for Mr. Gagnon, Your Honor.

24 THE COURT: All right. Redirect?

25 MR. BUECHE: Yes.

REDIRECT EXAMINATION

BY MR. BUECHE:

Q. Mr. Gagnon, salary wasn't the only thing that you received from UCF Trading since 2008, isn't it? Didn't you also receive monies for some other purpose besides your salary?

THE COURT: You may lead the witness.

BY MR. BUECHE:

Q. Like reimbursing for expenses or repaying loans, things of that nature?

A. I gave a list of everything that was paid to me every year. There was a complete list given. So I don't know if you got the list, but I made it on purpose to do that myself.

Q. And what did you use to make that list?

A. I use the accounting, general ledger. I use all the accounting that we had.

Q. Uh-huh.

A. And then I went line by line, and then whatever it was attribute to me, then I put it as a salary.

Q. Okay. But those general ledgers have not been produced to me, have they? You haven't provided them to your attorney. You've just gotten the information and given us that, right?

A. I don't know. I think that we produce all the documents that we had.

Q. Okay. Well -- but not the ledgers that you used to get the amount that you say you received --

1 A. We use --

2 Q. -- from UCF --

3 A. -- computers, so, you know, I mean, it's -- we don't have a
4 ledger like that.

5 Q. Well, it's a computerized ledger, then, right? I mean,
6 it's not paper. It's --

7 A. I mean --

8 Q. But you looked at something that was not produced to me,
9 basically, isn't that right?

10 A. I don't know what your question.

11 Q. Okay. It's really very simple. You say you looked at
12 computer data and made a summary for me, but you didn't provide
13 the actual computer screens or ledger entries or any of that
14 original data to me, right?

15 A. I didn't give you my computer, no.

16 Q. Okay. And just one last question about opening up the bank
17 account. What was the hurry in opening up a bank account? I
18 mean, why did UCF Company begin business without a bank
19 account? Couldn't it have waited until October of 2012? Or
20 was there a reason that you were in a hurry?

21 A. Because we were told that we could obtain the business
22 license immediately. But in the Bahamas, things happen
23 differently, so we got it a year later.

24 Q. But you didn't wait until the account -- till the bank
25 allowed an account before starting business with UCF Company,

1 isn't that right?

2 A. Could you repeat that, please?

3 Q. You did not wait until there was a UCF Company bank account
4 before starting business of UCF Company?

5 A. No, because -- you have to understand that UCF Trading had
6 no more asset and had no more way of doing business.

7 Q. Uh-huh.

8 A. So we had to reinvest money and I was not going to put more
9 money into a company that was losing money. So this is the
10 reason that we started another company to invest money in, and
11 this is why we started immediately. And we thought we could
12 have the business license immediately, but it was not given to
13 us.

14 MR. BUECHE: Thank you. I have no further questions.

15 THE COURT: All right. Further examination of this
16 witness?

17 MR. COSENTINO: No, Your Honor, nothing based on
18 that.

19 THE COURT: All right. You may step down. Call your
20 next witness.

21 THE WITNESS: What do I do with these papers?

22 THE COURT: You may step down and hand the documents
23 to counsel. You can give them to Mr. Bueche.

24 MR. BUECHE: I have no further witnesses on the issue
25 that's been produced, Your Honor.

Bueche - closing

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1 THE COURT: Any witnesses on behalf of the respondent
2 or the defendant?

3 MR. COSENTINO: No, Your Honor.

4 THE COURT: All right. All right. We have heard all
5 the testimony we're going to hear. I will hear counsel in
6 closing arguments.

7 CLOSING ARGUMENT ON BEHALF OF PLAINTIFF

8 MR. BUECHE: Gregory Bueche for YCB, Your Honor.

9 I think it's -- first it's --

10 THE COURT: You may step down.

11 MR. BUECHE: Yeah. I'm sorry.

12 THE COURT: You may sit with your counsel at counsel
13 table.

14 (Witness excused.)

15 MR. BUECHE: I think that we spent a lot of time
16 trying to figure out whose banking accounts belong to who and
17 what was paid to who and what deposits were made. If checks
18 and wire transfers and depository records had been produced as
19 required by paragraph 1 of the citation, we wouldn't be
20 bothering the Court with this. And it is available. It's not
21 readily available right away, easily, but at least it's at the
22 bank.

23 The second thing is that the customers and the
24 invoices are confused, and the only reason why we even know
25 whose invoices have what on top of them is that I've subpoenaed

1 one customer, Dexter Axle, and we saw UCF Trading sending out
2 invoices, being claimed by UCF Company as their receivable, and
3 that -- I don't know how many times we need to see that when
4 there's only one company that we were able to get a hold of.

5 Now, I can subpoena every single company, but I think
6 it's probably better for the receivables and the invoices to be
7 produced as required, as part of the books and records.

8 And then we did ask for all the transactions between
9 UCF Company and UCF Trading, and we got nothing aside from what
10 I could glean from the check registers and the invoice
11 listings, and that just raised more questions than it answered.

12 I would like my own answers to these questions by
13 seeing the actual documents, just like I would like to see the
14 actual documents relating to the salary or supposedly that was
15 paid to Mr. Gagnon.

16 And I know that this sort of blends into the issue of
17 whether or not they're the same companies, but it really
18 doesn't. I mean, it doesn't if they actually produce what they
19 could themselves call to be UCF Trading Company documents.

20 So Your Honor will make a decision in equity. I
21 would like to move forward. I don't -- didn't want to be here
22 in this supplemental proceeding in this court in the first
23 place.

24 THE COURT: Nor did I want you here.

25 MR. BUECHE: I know, Your Honor. I was sent here by

1 the state court, believe it or not, because you had the
2 original case. And this is not difficult to figure out. Thank
3 you.

4 THE COURT: All right. Response.

5 MR. COSENTINO: Thank you, Your Honor.

6 CLOSING ARGUMENT ON BEHALF OF DEFENDANT

7 MR. COSENTINO: Judge, I don't want to lose sight of
8 the fact that we're here for a very limited reason today, and
9 obviously --

10 THE COURT: What is that limited reason?

11 MR. COSENTINO: The limited reason is to determine
12 whether or not Mr. Gagnon or whether or not UCF Trading should
13 be held in contempt of court for failing to produce documents
14 in response to a third-party citation -- or strike that -- in
15 response to a debtor citation.

16 Mr. Gagnon testified that he's produced everything
17 that he has. Now, it's my understanding that unless he is
18 ordered by the Court to do so, he's under no obligation to go
19 out and get documents that are not available to him or that he
20 does not have access to. Because it seems to me as if he does
21 not have the documents and he has to get them from the bank,
22 there's going to be some expense that has to be borne,
23 especially if we're talking about the type of detailed banking
24 information that Mr. Bueche is referring to.

25 We produced the bank account information in response.

1 If Mr. Bueche wants more, I will be more than happy to speak
2 with Mr. Bueche about what exactly it is that he wants. But
3 we'd have to determine how much it's going to cost to get these
4 from UCF Trading's bank, First Caribbean International Bank,
5 and then determine who's going to bear the expense of that.

6 It's evident, I think, to me, as it is to the Court,
7 that where Mr. Bueche is headed with this is a potential either
8 successor liability or alterego claim, but that's not why we're
9 here. So while the accounting practices of UCF Trading and UCF
10 Company, for that matter, might leave much to be desired,
11 especially in the eyes of this Court, especially in the eyes of
12 the way Americans generally do business, we're here to
13 determine whether or not UCF Trading willfully not -- did not
14 comply with the citation. And I think based on Mr. Gagnon's
15 testimony that he has produced everything that was asked of him
16 that he had, I don't think Mr. Bueche has met his burden.

17 If Mr. Bueche wants to narrow down the request, if he
18 wants to make specific requests rather than casting as wide of
19 a net as he has, I think we could probably reach a pretty
20 speedy resolution. But if Mr. Gagnon had to go to UCF Trading
21 Company's bank and request this information, I think it's going
22 to cost countless dollars.

23 So I don't know that Mr. Bueche has met his burden.
24 I don't think that he has. It's obviously up to the Court to
25 make that determination. But I think his testimony that he has

1 produced everything that he has, and done so in good faith,
2 means that the Court should not hold him in contempt of court.

3 THE COURT: Thank you.

4 MR. COSENTINO: Thank you.

5 THE COURT: Anything further?

6 REBUTTAL ARGUMENT ON BEHALF OF PLAINTIFF

7 MR. BUECHE: If there was a huge financial burden of
8 producing these documents, there should have been an objection
9 and we could have discussed it back in October, not after a
10 rule to show cause hearing. Thank you.

11 THE COURT: All right. I believe that Mr. Gagnon has
12 willfully violated the request for citation to discover assets.

13 I believe that Mr. Gagnon, as president of both UCF
14 Trading and UCF Company, has access to the documents and
15 transactions engaged in by both companies. For purposes of
16 responding to the citation to discover assets, Mr. Gagnon
17 should have provided the documentation and the financial
18 records that were called for from one or both companies in each
19 of the numbered paragraphs.

20 I believe the numbered paragraphs were sufficiently
21 limited and clear in scope so as to provide sufficient
22 information so a responding party such as Mr. Gagnon, in the
23 position that he is in, and has been in, could identify and
24 provide the information.

25 Documents such as Plaintiff's Exhibit 5 and

1 Plaintiff's Exhibit 4 are not responsive. As counsel for UCF
2 pointed out, these documents themselves could be placed on a
3 flash drive and provided. It wouldn't take truckloads.
4 Mr. Gagnon wanted me to believe that the documents themselves
5 would be truckloads, but, in fact, the business that he engages
6 in is almost exclusively electronic.

7 And so I believe there has been an attempt, a willful
8 attempt to evade the production requirements. I'm going to
9 order that Mr. Gagnon, UCF Trading, UCF Company provide all of
10 the documents that are called for in the citation to discover
11 assets, and that they provide those documents no later than
12 three weeks from today in a means and through a mechanism
13 dictated by Mr. Bueche.

14 Today is the 18th of February. That's the 11th of
15 March. We're going to set the case for a further status on the
16 18th of March.

17 If there is a failure to provide documentation, then
18 beginning on the 18th of March, retroactive to the 12th of
19 March, I will enter a financial sanction that will accrue on a
20 daily basis until there is complete compliance with the
21 citation to discover assets. It will be an escalating
22 financial sanction that will escalate at a reasonable rate
23 until there is compliance. It will be a civil contempt
24 sanction that is totally in the control of Mr. Gagnon, UCF
25 Trading, UCF Company to comply with.

1 So I am going to ask you one more time, before I
2 impose the sanction. But I am making the finding today that
3 this was a willful violation. To see this man on the witness
4 stand try to be deceptive as he was I think indicates what has
5 transpired here. There was an attempt to avoid the disclosure
6 of information. That's the ruling.

7 With regard to the dicta, as I said, I looked at the
8 website. The website is copyrighted by UCF Trading. That
9 means UCF Trading is the owner of the website of UCF Company.
10 That means that all representations made on the website, which
11 is *www.ucftrading.com*, are UCF Trading or they couldn't own a
12 copyright.

13 And so, consequently, I would think that you folks
14 ought to try to resolve this case before we move forward
15 regarding the corporate liability of UCF Company for the
16 transactions and the judgments entered against UCF Trading. I
17 strongly recommend that. I, frankly, think that you folks
18 should get this resolved. If you don't, we'll proceed to the
19 next level.

20 Transactions in the Bahamas are transactions in the
21 Bahamas, but if you're going to do business in the United
22 States, you have to comply with the United States law. And so
23 this judgment that was entered by a United States District
24 judge is under the laws of the United States and there must be
25 compliance therewith.

1 All right. I will see you on the 18th of March. I
2 would like to have you folks come on in and tell me that you
3 resolved the matter.

4 MR. BUECHE: Your Honor, I have a family vacation
5 planned from the 12th to the 26th of March. If you'd like to
6 build more time in for counsel to work on documents or --

7 THE COURT: You want to give them until the 18th?

8 MR. BUECHE: Sure. And then see --

9 THE COURT: All right. It will be the 18th.

10 MR. BUECHE: And see you April 1st, perhaps?

11 THE COURT: Absolutely not.

12 MR. BUECHE: Okay.

13 THE COURT: You see, I'm out on April 1st. April
14 3rd.

15 MR. BUECHE: April 3rd. Okay.

16 THE COURT: If there isn't compliance, if I don't
17 hear from you folks on April 3rd that there has been
18 compliance, then retroactive to March 18th, the sanction will
19 commence.

20 MR. COSENTINO: Your Honor, may I get clarification?

21 THE COURT: I love it when counsel ask for
22 clarification.

23 MR. COSENTINO: I appreciate your being facetious,
24 Judge, but I have a genuine request here.

25 THE COURT: I am not being facetious. I love it

1 because that makes it clearer.

2 MR. COSENTINO: I'm looking at the motion for rule
3 to -- or petition for rule to show cause --

4 THE COURT: Yes.

5 MR. COSENTINO: -- filed by Mr. Bueche, and
6 specifically paragraph 6 where he seems to highlight the
7 documents that he asserts are missing.

8 What I would propose, and I don't know that the Court
9 needs to babysit this, but I would like to sit down with
10 Mr. Bueche and use this as our baseline for what he believes is
11 still missing, unless there are other documents that I'm
12 missing, because I think this is what he brought the rule based
13 upon.

14 MR. BUECHE: Your Honor, I think counsel should sit
15 down with Mr. Gagnon and obtain the documents that you have
16 referred to from the bench.

17 MR. COSENTINO: And, obviously, I will do that. But
18 I'm -- again, I'm referring to the petition for rule, and
19 specifically the way he's got, I believe, six subparagraphs,
20 categories of documents that he's alleging are missing.

21 THE COURT: The proof today went beyond that. The
22 proof today talked about tax returns. This man said, "Oh, we
23 don't file tax returns because there aren't any tax returns."

24 MR. COSENTINO: That was --

25 THE COURT: But there are tax returns. There are

1 duty returns and there are real estate tax returns. That
2 hasn't been produced.

3 The proof went beyond the petition. The petition
4 doesn't limit the proof.

5 MR. COSENTINO: I understand. And, actually, tax
6 returns are listed in 6(c). Those were the -- that's -- those
7 are the documents --

8 THE COURT: And you didn't produce them.

9 MR. COSENTINO: I understand.

10 THE COURT: Willfully.

11 MR. COSENTINO: I'm not -- I don't mean to anger the
12 Court. I'm just trying to -- I want to make sure that we do
13 comply, Judge, that we don't come back in here and have a --

14 THE COURT: Well, then what you should comply with is
15 not to try to wheedle away your noncompliance by saying, "Oh,
16 you know, he didn't really complain about that."

17 I saw for the first time today, in my opinion, how
18 deceptive this man is and how he is attempting to deceive and
19 has attempted to deceive. I mean, this whole scenario of an
20 agency that was made up, apparently, in his mind to try to have
21 some legal demonstration of separateness just does not exist.
22 There is no separateness as far as I can tell.

23 I am not making a determination today on that, but I
24 will at some point if pushed to do so, and I will take into
25 account all of the evidence, as I took into account today all

1 of the evidence. If you want to try to nitpick, I'm telling
2 you now is not the time to nitpick. Now is the time to comply.

3 MR. COSENTINO: That's my intention, Your Honor.

4 THE COURT: You have been, apparently, nitpicking
5 before, as has your client, "Oh, we don't have tax returns
6 because the Bahamas is a financial paradise." It didn't say
7 "income tax returns." It said "tax returns." Now, that may be
8 a minor point on this, but it shows a mentality of deception
9 and lack of truthfulness that has come through loud and clear
10 today.

11 I am giving you an opportunity -- I am not imposing
12 sanctions today. I am giving you an opportunity to comply, but
13 there will be sanctions -- and I have imposed substantial
14 sanctions on foreign companies when necessary, and I will do so
15 again when necessary. I am hoping it will not be necessary.
16 I'm basically giving you a second chance, saying, "Look, you
17 haven't pulled the wool over my eyes yet." I'm giving you
18 another chance to be truthful and candid and forthright. Okay?

19 MR. COSENTINO: Very good.

20 THE COURT: All right.

21 MR. COSENTINO: Thank you, Judge.

22 THE COURT: We'll see you then.

23 (Proceedings concluded.)
24
25

C E R T I F I C A T E

I, Colleen M. Conway, do hereby certify that the foregoing is a complete, true, and accurate transcript of the Evidentiary Hearing proceedings had in the above-entitled case before the HONORABLE JAMES F. HOLDERMAN, one of the Judges of said Court, at Chicago, Illinois, on February 18, 2014.

/s/ Colleen M. Conway, CSR, RMR, CRR

03/05/14

Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

Date